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July 17, 2002

The Honorable Dr. John D. Graham, Administrator
Information and Regulatory Affairs
Office of Management and Budget
Executive Office of the President
Room 262, EEOB
Washington, DC 20503

Re: NPDES Permits for Storm Water Phase I and II Rules in Relation to Oil and Gas Construction Activities

Dear Administrator Graham:

I am extremely concerned by an attempt from the Environmental Protection Agency (EPA's) to expand its storm water regulations over the oil and gas industry. This action by the EPA will greatly exceed the statutory limitations of the Clean Water Act, will have a negative impact on oil and gas operations, impede necessary domestic energy development, violate Executive Order 13211 "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use", and contribute little or no identifiable improvement to human health and the environment.

These concerns have been brought to my attention by a number of independent oil and gas producers and industry associations including the Oklahoma Independent Petroleum Association, the Kansas Independent Oil and Gas Association, the Texas Independent Producers and Royalty Owners Association, the Texas Alliance of Energy Producers, the Independent Petroleum Association of America, the Louisiana Independent Oil and Gas Association, the Independent Oil and Gas Association of Pennsylvania, and the Independent Oil and Gas Association of New York that represent over 11,800 small companies engaged in the exploration and production of crude oil and natural gas.

The Clean Water Act (33 USC Section 1342 (1)(2)) exempts exploration and production activities which occur at oil and natural gas drill sites. These activities naturally include the construction and preparation of the drill site, the construction of a road to the drill site, and the construction of a gathering line to connect a productive well to a pipeline once the well has been completed. The EPA is now trying to expand its jurisdiction by claiming that "construction" is not a part of exploration and production activity, and that this "construction" should require a storm water permit. There is no definition or

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language in the Clean Water Act or the regulation that stem from the Clean Water Act to support the EPA's assertion that "construction" activities should be considered separate from the term "exploration" and/or "production" activities.

If this massive expansion of regulation is allowed to go forward the annual cost to industry will easily exceed \$100 million and will likely be several times greater. Yet, EPA did not consider the significant economic and practical impacts to the oil and gas industry during the economic impact analysis for the Phase II rulemaking because EPA chose to interpret the regulatory impact in such a way as to avoid the necessity to comply with Executive Order 12866.

I urge you to issue a "Return Letter" so that OIRA can determine if the proposed regulation is in compliance with Executive order 12866 and Executive Order 13211, and that EPA is not exceeding it's authority under the Clean Water Act. Time is of the essence, for I am informed that EPA intends to issue this regulation before the end of this month.

I await your prompt response. If you have any questions about this request, please contact my Chief of Staff, John Albaugh, at 225-2132. Thank you in advance for your consideration.

226 2155

Very truly yours,



Ernest J. Istook Jr,
Member of Congress



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

September 3, 2002

ADMINISTRATOR
OFFICE OF
INFORMATION AND
REGULATORY AFFAIRS

The Honorable Ernest J. Istook Jr.
U.S. House of Representatives
Washington, DC 20515

Dear Congressman Istook:

Thank you for your July 17 letter apprising me of your concern with the Environmental Protection Agency's (EPA) interpretation of the Clean Water Act Section 402(l) exemption for oil and gas exploration facilities from storm water permitting requirements. As I understand it, at issue is whether the exemption applies to the construction of such facilities, or only to the operation of the facilities after construction is completed. While this is not a new issue, it has recently become more important because the Phase II storm water requirements, which will lower the threshold of covered facilities from five acres to one acre, are scheduled to go into effect in March of 2003, and thousands of wells that would not have exceeded the five-acre threshold but may exceed the one-acre threshold will potentially be affected.

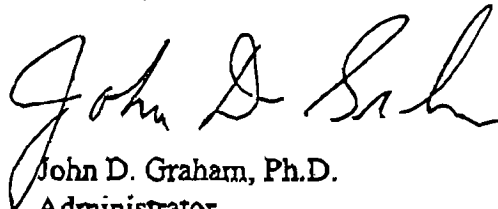
I agree with you that this is an important issue. However, the Office of Information and Regulatory Affairs' (OIRA) primary role under Executive Order No. (E.O.) 12866 is to review agency rules and supporting analyses prior to publication. In this case, there is not a rule currently under review. EPA is currently preparing a draft general permit which will replace the existing storm water general permit and implement the Phase II requirements (promulgated in December of 1999). EPA expects to publish the draft permit for public comment shortly and to issue the final permit by December 31, 2002. To date, EPA has addressed the issue of storm water permitting during the construction phase of oil and gas exploration through interpretative guidance only.

Under these circumstances, I believe your concern can best be addressed by the White House Task Force on Energy Project Streamlining, created by the President through E.O. 13212 to deal with exactly this type of issue, and I have referred the matter to them. As you may know, the Task Force was created to fulfill the goals of E.O. 13212 by expediting energy-related projects to provide for the increased production and transmission of energy in a safe and environmentally sound manner. It is also charged with ensuring that Federal agencies responsible for review and permitting of energy-related projects are coordinating their efforts to integrate decision-making and maximize staff time and resources in accordance with environmental laws. I have provided the Task Force with a copy of your letter and some background materials prepared by my staff. The Task Force has informed me that they are already reviewing this issue and have begun discussions with EPA, the Department of the Interior, the Department of Energy, and other concerned agencies to try to resolve it.

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Please feel free to contact the Task Force Director, V.A. Stephens (202-395-0801), if you wish to discuss this matter further. The lead staff person on this issue is Brenda Mallory (202-586-3301). If I can be of any further assistance, do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "John D. Graham". The signature is fluid and cursive, with the first name "John" being the most prominent.

John D. Graham, Ph.D.
Administrator
Office of Information
and Regulatory Affairs